

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 5860 of 1998

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

-
1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ISMAIL M MAHIDA
VERSUS
STATE OF GUJARAT

Appearance:

MS SEJAL MANDAVIA for the Petitioner
MR VB GHARANIA for Respondents No.1 and 3
MR NILESH M SHAH for Respondent No.2

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 15/08/1999

C.A.V. JUDGMENT

Heard the learned counsel for the parties.

2. The petitioner was appointed on 19th September, 1981 as Chowkidar in the office of the respondent No.2. His services were terminated on 12-5-1986. He raised an industrial dispute where the matter has been compromised. He was taken back in service without backwages and he attained the age of superannuation on 31-1-1998. He lodged a claim for pension which was not accepted. Hence, this petition before this Court.

3. It is the case of the respondent that the post on which the petitioner has been appointed was not a sanctioned post. It has next been contended that only those employees of the Gram Panchayat who have been appointed regularly that is after following the procedure of appointment laid down on sanctioned post if they are having to their credit the qualifying services are entitled for pension and other retirementary benefits.

4. The petitioner's appointment was a back door entry i.e. it has been made without selection. Not only this, he was not eligible on the post as on the date of appointment he was of the age of more than 43 years. The compromise which has been entered into is also without the sanction of the State Government. Ultimately the pension liability falls on the State Government and if there was a case of termination of the services of the petitioner which he questions before the Labour Court, the State Government should have been impleaded as a party. That has also not been done. It is a case where in case on the basis of these facts the pensionary benefits are extended then it will open the flood gates for corruption, nepotism, favouritism etc. It is not unknown that in the Gram Panchayats, Municipalities or even in the Talukas or the District Panchayats, the appointment by illegal means are a rule and if those persons are given the benefits of pension then there will no end to such matters. Rule of law will not be there. Sympathies may be there with the litigants but it cannot be to the extent where they have to be given the benefits though their very induction in service is illegal. Their continuation in service is also illegal. This is a case of this category and the petitioner when his appointment itself was bad he cannot be given the benefit of pension. If such type of persons are allowed to be given the benefit of pension it will certainly be a fraud played to Rules, Regulations and even the Constitution. This will not be permitted tolerated and allowed by this Court more so sitting under Article 226 of the Constitution where it

exercises extraordinary equitable jurisdiction.

5. Learned counsel for the petitioner made reference to the order dated 30-12-1994 where ex post-facto sanction has been granted for the post in the case of Bantwa Nagar Panchayat. That order will be of no help to the petitioner because in what facts this order has been passed are not available. Otherwise also, in case the ex post-facto sanction to the posts are granted then what this court will do, to permit the State of Gujarat to act contrary to the rules and even contrary to the Constitution. It is the people's money and which cannot be allowed to be taken away by those persons who manipulate or make way to enter into services totally de hors of the rules, regulations and of the Constitution. That order is of no help to the petitioner in this case. Each case has to be decided on the basis of its own facts. Otherwise also, it is no more res integra that on the basis of the illegal action or order of the authority plea of discrimination cannot be permitted by this Court under Article 226 of the Constitution by other persons. In such matters, this court will not go to examine the validity of that order but it will not permit the petitioner to get the benefits which otherwise are not available to him.

6. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. Though it is a fit case where the petitioner should be saddled with the costs of the petition, looking to the fact that he is no more in service, no order as to costs.

zgs/-